

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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JEREMY JOSEPH STROHMEYER,

Plaintiff,

v.

KELLY BELANGER, *et al.*,

Defendants.

CASE No.: 3:14-cv-00661-RJ-WGC

ORDER
(re: ECF No. 296)

Before the court is yet another discovery dispute. The 311+ filings in this case document the long, tortured “progress” (if one may so describe it) toward resolution.¹

The current discovery dispute is presented by “Plaintiff’s Motion to be Provided Copies of Documents from Plaintiff’s Institutional File (I-File) Pursuant to NDOC Administrative Regulation 568” (ECF No. 296). Defendants opposed Plaintiff’s motion (in part) in their “Response to Plaintiff’s Motion to be Provided Copies of Documents” (ECF No. 306); and Plaintiff replied in his “Reply to Response to Plaintiff’s Motion to be Provided Copies of Documents” (ECF No. 307).

Prior to commencing its review of the latest discovery dispute among the parties, the court reminds the parties the deadline for filing motions for summary judgment in this case is Monday, June 1, 2020. In its Order granting Plaintiff’s requested extension, the court stated emphatically that **THERE SHALL BE NO FURTHER EXTENSIONS GRANTED** (ECF No 293). As the court does not intend to further extend this deadline, the parties should be aware that time is of the

¹ The background of this case was set forth thoroughly when the court analyzed Plaintiff’s complex allegations in its screening order regarding Plaintiff’s Third Amended Complaint which will not be re-stated at this point (see, ECF No. 153, Order re ECF No. 120, 7/2/2019).

1 essence in adhering to the order of the court as set forth here in resolving this discovery dispute.

2 Plaintiff's motion (ECF No. 296) details several requests Plaintiff has made in this action
3 to obtain copies of documents from his Nevada Department of Corrections (NDOC) Institutional
4 File (I-File), including kites, letters, and formal request(s) for production and communications with
5 Defendants' counsel. Most interesting was Plaintiff's outline of a request for production of
6 documents (RFP) for his I-file he directed to former NDOC Offender Management Division
7 Supervisor Dwayne Deal – who would presumably be the custodian of records contained in an
8 inmate's I-file. Plaintiff states that after Defendants secured several extensions of time from the
9 court for Deal to respond to the RFP, Deal had retired from NDOC. According to Plaintiff's
10 representations, when Deal finally responded to the RFP some six months after it was served, Deal
11 stated that he had retired from NDOC and was thus not in “possession, custody or control of the
12 requested documentation.” (ECF No. 296 at 4).

13 Plaintiff also references a hearing the court conducted on August 27, 2019, where the
14 subject of the requested production of Plaintiff's I-file was briefly addressed by the court. During
15 that hearing, with respect to the I-file production issues, the transcript reflects that the court stated
16 to DAG Rands that “Mr. Rands, you might look into Mr. Strohmeyer's complaints about copying
17 certain documents out of his I-file, because [AR] 568-05 seems to allow it under special
18 circumstances, and maybe this action provides those special circumstances, okay?” To which
19 Mr. Rands replied, “I will be having a conversation with Mr. Strohmeyer, not today, but at a time
20 in the near future and we can discuss that.” (ECF No. 217 at 47).²

21 According to Plaintiff, Mr. Rands did not contact him as was represented. While Plaintiff
22 describes Mr. Rands' failure to do so as a “misrepresentation,” a characterization with which the
23 court does not concur, nevertheless Mr. Rands admitted that “Counsel cannot recall if he ever
24 contacted Plaintiff about this issue.” (ECF No 306 at 2). The court assumes that, unfortunately,

25 ² AR 568.05(2) states that [if] special circumstances exist, upon approval of the AW/Facility Manager,
26 copies may be provided to the inmate in accordance with the Department's Administrative Regulation 722,
27 Inmate Legal Access.” Defendants' memorandum references subsection 722.01(7) which only imposes the
28 copy charges – as “determined by Fiscal Services” – upon the inmate. It does not appear Defendants have
secured the cost of copy work of the I-file – which in any event the court has stated should be borne by
Defendants.

1 there was no discovery meeting following the court's 8/27/2019 hearing, nor apparently has there
2 been any attempt to pursue a meet and confer subsequent to the filing of Plaintiff's motion.

3 To Defendants' credit, Defendants' response to Plaintiff's motion indicates that
4 Defendants at least attempted to secure and produce certain of the requested documents out of
5 Plaintiff's I-File which he had sought from Defendants. (*id* at 3; ECF 306-4). Plaintiff disputes
6 that the production is complete. Plaintiff also argues, as the court itself recognizes, that certain
7 documents the Defendants did produce are illegible for various reasons (ECF No. 307).

8 A fair amount of argument is presented by both parties about the "NOTIS" documents that
9 would have been contained in Plaintiff's I-File. It appears from the Prentice Declaration (ECF No.
10 306-4) that the NOTIS documents (approximately 50 pages) were printed by Mr. Prentice.
11 According to Defendants' memorandum, "restricted and/or confidential" entries are removed
12 before the inmate is allowed to review the NOTIS materials (ECF No. 306 at 3). Defendants
13 generally cite the "AR" for the authority that an inmate is not entitled to the case notes; the court
14 could not find authority for that proposition in AR 568. While reviewing this AR, the court also
15 learned that AR 568.03(2)(D) states that the case notes (NOTIS) are also supposed to be destroyed
16 after the inmate reviews them. Nevertheless, Defendants' memorandum suggests and the Prentice
17 declaration confirms they still exist (ECF No. 306-4). The main argument has boiled down, it
18 appears, as to who pays for the copies – even though they have already been copied and were not
19 destroyed per NDOC policy.

20 The court does not have the time – or at this stage of the litigation, the patience beyond that
21 displayed in this Order - to delve into the intricacies of the NDOC I-file production – or non-
22 production. The court concludes nonetheless that this dispute cries out for a meet and confer
23 conference to be conducted between Plaintiff, DAG Rands and one or more knowledgeable NDOC
24 personnel (e.g., Steve Prentice, ECF No 306-4). It is the court's conclusion that Defendants should
25 err on the side of production/disclosure when attempting to resolve this discovery dispute
26 regarding Plaintiff's I-file, particularly with respect to the NOTIS materials.³

27
28 ³ The court concurs with Plaintiff's assessment that Defendant Bobadilla's name and identifying
information should not be withheld as AR 569.02(5)(A) allows disclosure of this information. If

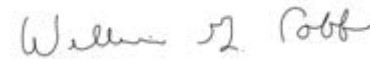
1 DAG Rands shall arrange for this meet and confer conference to take place within five
2 business days of this order. If the parties cannot agree that production of the requested items from
3 Plaintiff's I-File has been satisfactorily completed, then within three business days of the meet and
4 confer conference the Plaintiff shall file a memorandum identifying any remaining areas of
5 dispute. If Defendants disagree with any contention the production was not satisfactory, and/or if
6 certain documents from Plaintiff's I-file of which Plaintiff seeks production are deemed
7 confidential or otherwise withheld pursuant to NDOC regulations, in addition to a memorandum
8 in reply to plaintiff's contention, Defendants shall submit bates-stamped copies of the withheld
9 documents to the court for an *in camera* inspection with their discovery report.⁴

10 In view of Defendant Deal not having responded to the RFP, and in the exercise of the
11 discretion of the court. production of any documents from Plaintiff's I-file pursuant to this Order
12 shall be at Defendants' expense.

13 Plaintiff's Motion (No. ECF 296) is granted in part and denied in part consistent with this
14 order.

15 **IT IS SO ORDERED.**

16 DATED THIS 6th day of May, 2020.

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18 

19 WILLIAM G. COBB
20 UNITED STATES MAGISTRATE JUDGE
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25 _____
26 Defendants seek to withhold any information in reports referencing Mr. Bobadilla, Defendants should
27 provide the authority for doing so.

28 ⁴ Because of the rapidly approaching deadline for the filing of dispositive motions, if it appears that a
hearing before the conduct on the remaining production would be beneficial, the parties may contact the
courtroom deputy to request an expedited telephonic discovery conference.